REMARKS

Claims 1-3, 8-12, 17, 58 and 60 are pending in this Application. Claims 1, 10, 58, and 60 have been amended without prejudice and without acquiescence to recite 50% instead of about 50%. Support for these amendments can be found in the Example. Claim 59 has been canceled without prejudice and without acquiescence. Applicants assert no new matter has been added.

Issues outstanding in the current Application are as follows:

- Claims 1-3, 8-12, 17 and 58-60 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

- Claims 1-3, 8-12, 17 and 58-60 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over co-pending Application No. 10/264,886 and 10/891,895.

- Claims 1-3, 8-12, 17 and 58-60 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Remmereit (U.S. Patent No. 6,042,869) in view of Hand *et al.* (U.S. Patent No. 5,431,927) and Hannah *et al.* (*Increased dietary protein spares lean body mass during weight loss in dogs.* Journal of Veterinary Internal Medicine. 1998:12. pg. 224).

I. 35 U.S.C. § 112, First Paragraph

Claims 1-3, 8-12, 17 and 58-60 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicants respectfully traverse.

The Examiner asserts that the specification does not provide a written description for the limitation "about 50 to about 70%". However, the Examiner acknowledges the specification does disclose "about 35% to about 70%" and "50%" (Office Action page 2). Applicants therefore have amended the claims without prejudice and without acquiescence to recite "50 to about 70%" and "50%" instead of "about 50 to about 70%" and "about 50%".

Applicants assert that the claims as amended comply with the written description requirement and no new matter has been added.

In light of the above amendment, Applicants respectfully request that the rejection be withdrawn.

II. Provisional Double Patenting

Claims 1-3, 8-12, 17 and 58-60 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over co-pending Application No. 10/264,886 and 10/891,895. Applicants respectfully traverse.

The court of Claims and Patent Appeals (now the Court of Appeals for the Federal Circuit) has stated: "Once the provisional rejection has been made, there is nothing the examiner and the applicant must do until the other application issues." *In re Mott,* 190 U.S.P.Q. 536, 541 (C.C.P.A. 1976) (emphasis added). MPEP § 804 allows for the prosecution to continue while a provisional double-patenting rejection is pending and even instructs the Office to continue to make such a provisional rejection until one of the applications issues as a patent.

Thus, Applicants request that the rejection be held in abeyance until the conflicting claims are in fact patented.

III. 35 U.S.C. § 103(a)

Claims 1-3, 8-12, 17 and 58-60 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Remmereit (U.S. Patent No. 6,042,869) in view of Hand *et al.* (U.S. Patent No. 5,431,927) and Hannah *et al.* (*Increased dietary protein spares lean body mass during weight loss in dogs.* Journal of Veterinary Internal Medicine. 1998:12. pg. 224). Applicants respectfully traverse.

The Examiner has acknowledged that Remmereit does not disclose the actual percentage of the protein in a dog food, and Hand *et al.* does not teach a pet food with protein within the Applicants claimed range (Office Action pages 4-5). The Examiner relies on

Hannah *et al.* to teach a high protein diet with 45% protein, which the Examiner has considered "about 50%". Claims 1, 10, 58, and 60 have been amended as to the range of protein added to the composition. Claims now recite "50%" instead of "about 50%". Therefore, in view of the currently amended claims, the references to not teach all the limitations of the claimed invention rendering the invention non-obvious. *In re Royka,* 490 F2d. 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Applicants further assert that because all dependent claims include the limitations of the independent claim to which they refer, and claims 2-3, 8, 9, 11, 12, and 17 depend at least in part from either independent claim 1 or 10, claims 2-3, 8, 9, 11, 12, and 17 are similarly non-obvious.

In light of the above amendment, Applicants respectfully request that the rejection be withdrawn.

CONCLUSION

In view of the above, applicant believes the pending application is in condition for allowance.

Applicant has co-submitted a Request for Continued Examination and appropriate fee with this response Applicant believes further no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P02206US0 from which the undersigned is authorized to draw.

Dated: October 29, 2007

Respectfully submitted,

By_/Jan K. Simpson/_____

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